

Serial No. 10/077,101
Filed: February 15, 2002
Examiner: B. Choobin

REMARKS

Reconsideration of the above-referenced application is respectfully requested. In summary, original claims 1 and 15 have been amended without prejudice. Original claims 2, 14, 16, and 28 have been cancelled without prejudice. The remaining claims are original. No new matter is believed to have been introduced by virtue of these amendments.

In summary, the Examiner rejected claims 1, 6, 14, 15, 20 and 28 under 35 U.S.C. 102(b) as allegedly anticipated by Nyberg et al. for reasons set forth in the Office Action.

On the other hand, the Examiner graciously indicated, and the applicants are most appreciative, that the remaining claims were allowable.

The applicants traverse the rejection but for expediency in light of the complicated subject-matter of the present invention, they have amended the claims in response to the Examiner's observation of allowance. However, with the Examiner's forbearance, rather than telescoping some of the subsequent dependent claims into the corresponding independent claims, the applicants have essentially folded original claim 2 into original claim 1; and original claim 16 into original claim 15.

Nyberg et al. does not reflect the reality of a busy excavation with multiple loaded vehicles continuously traversing a dedicated fragmentation analysis site. The patentable notion of recognizing each vehicle in a plurality of vehicles, while utilizing the present process, is believed to be both novel and not suggested by Nyberg et al. Accordingly, claim 2 goes into claim 1 and claim 16 goes into claim 15.

It then logically follows that the remaining dependant claims are patentable as well.

Moreover, in contrast to the Examiner's objection relating to claims 6 and 20, it is unclear just what Picture 1 actually is and where the camera is situated. The abstract (page 293) states that "TV-camera pictures of the *ore deposit* are digitalized." (emphasis added). In the Results section (page 298), there are references to "two simulated ore *deposits*" and

"[t]en different images have been taken of each *deposit* in different cuts." (emphasis added). The applicants cannot assume what position the camera is in when the images of the "deposits" are captured. Indeed, to one skilled in the art, a **deposit** is defined as "[c]onsolidated or unconsolidated material that has accumulated by a natural process or agent." McGraw-Hill Dictionary of Scientific and Technical Terms, Third Edition, edited by S.P. Parker, 1984, N.Y.

Frankly, it is unclear whether Nyberg et al. is actually viewing and analyzing broken material on the ground, in a vehicle or in an intact in-situ deposit that is scheduled to be fragmented. Even assuming arguendo that broken fragments are being analyzed in Nyberg et al., how can it be postulated that a top view is used? We do not know where the camera is located. Accordingly, the applicants must respectfully disagree with the Examiner vis-à-vis claims 6 and 20.

In summary, the claims have been amended in view of the Examiner's kind suggestions overcoming the 35 U.S.C. 102(b) rejections.

The applicants respectfully submit that the cited reference, even if viewed in the improper afterglow of hindsight, does not anticipate or suggest the present invention. Although the reference and the present invention are in the same analyzing universe, the present claims were not even a gleam in the eye of one skilled in the art.

Accordingly, the Examiner is urged to please reconsider the rejections and this response thereto. In the event the Examiner believes after consideration of this response that the prosecution may be expedited by an interview with an authorized representative of the applicants, the Examiner is invited to contact the undersigned at (201) 328-4853.

7/20/05

DATE

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